

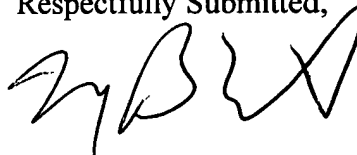
whereas Applicant claims a variable displacement motor for the purpose of responding to a variety of pressure differentials between opposite sides of a hydraulic cylinder. There should be no dispute that neither Applicant's previous constant displacement motor, nor the claimed variable displacement motor are present to regulate a pressure differential between opposite sides of the hydraulic cylinder of Applicants claimed system. Furthermore, the logic behind the office action suggests that one with ordinary skill in the art would be motivated to substitute a variable displacement motor to regulate pressure across a throttle valve. But Applicants claimed invention does not even require a throttle valve, and the purpose of the variable displacement motor is to add additional capabilities while eliminating the constant displacement motor and throttle valve disclosed in Applicant's previous work. Therefore, the grounds asserted in the office action for combining the cited references simply does not exist in the context of the presently claimed invention. Stripped of this nonexistent grounds, the office action essentially asserts that one with ordinary skill in the art would find it obvious to try a substitution of a variable displacement motor in place of the throttle valve and constant displacement motor of the Applicant's previous work, simply because there exists a reference that shows a variable displacement motor in the context of a hydraulic system that recovers energy. This application should not have to again go to appeal in order to have the correct standard under §103 applied. Therefore, Applicant respectfully requests that the outstanding §103 rejections be withdrawn.

Applicant would also respectfully point out that Applicant's claims require that the variable displacement motor be fluidly positioned between opposite sides of the hydraulic cylinder. There should be no dispute that Lisniansky explicitly teaches away from such a structure. And therefore, one with ordinary skill in the art would again find no reason to look to Lisniansky or any other reference of record for a solution of how to improve upon and/or solve problems associated with the Applicant's own previously disclosed system. Lisniansky does not even show a hydraulic system where the hydraulic cylinder can be driven in either direction, as would be necessary in a work machine application. Instead, Lisniansky teaches a constant pressure on side of his hydraulic cylinder regardless what the pump or motor are doing. A proper §103 rejection in this case ought to require that the Examiner identify some reference that teaches the advantages of substituting a variable displacement motor in place of a throttle valve and fixed displacement motor, which are coupled to a generator, for better response to variable pressure differentials caused by different loads supported by a hydraulic cylinder. Currently

there is no such reference of record, and this application should not go up on appeal twice simply because Applicant has claimed the broad subject matter to which he is entitled. Therefore, Applicant again respectfully requests that the §103 rejections be withdrawn and that this application be advanced to a Notice of Allowance.

This application is believed to be in condition for allowance of claims 1-17. However, if the Examiner believes that some minor clarification would put this application in even better condition for allowance, the Examiner is invited to contact the undersigned attorney at (812) 333-5355 in order to hasten the prosecution of this application.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'MBM', with a stylized flourish at the end.

Michael B. McNeil
Reg. No. 35,949